IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (LODG.) NO. 928 OF 2007

Indian Airport Employees Union)
having its office at Union Office,)
CPWD Colony, Sahargaon,)
Mumbai – 400 099. .. ..).. Petitioner.

Versus

1) Union of India)
Through the Ministry of Labour,)
Through Aayakar Bhavan,)
Marine Lines, Churchgate,)
Mumbai. .. ...)
2) The Regional Labour)
Commissioner (Central) at)
Mumbai, Shram Raksha Bhavan,)
Near Shiv Shruthi, Sion,)
Chunnabhatti, Mumbai.)
3) Airport Authority of India,)
(Through the Western Regional)
Airport Director), Chatrapati)
Shivaji International Airport,)
Office of the RAD, Near)
Terminal 1b, Mumbai-400 099.)
4) Mumbai International Airport)
Private Limited,)
Chatrapati Shivaji)
International Airport,)
Terminal 1b, Mumbai-400 099.).. Respondents.

Mr. Anand Grover with Ms. Jane Cox for the Petitioner.
Ms.Leena Patil for Respondent Nos.1 and 2.
Mr. C.U.Singh, Sr. Advocate with Ms. Kavita Acnhan
i/by M/s. M.V.Kini & Co., for Respondent No.3.
Mr.F. Karachiwala i/by M/s. Wadia Ghandy & Co.,
for Respondent No.4.

CORAM : SWATANTER KUMAR, C.J. &

DR. D. Y. CHANDRACHUD, J.

RESERVED ON : 28TH AUGUST, 2007
PRONOUNCED ON: 20TH SEPTEMBER, 2007.

JUDGMENT : (Per SWATANTER KUMAR, C.J.)

The petitioner is a registered trade union, registered under the provisions of the Trade Unions Act, 1926. The petitioner claims to be representing the workers in the Mumbai Airports and the present petition relates to the cause of 11 (eleven) workmen, who were working as sweepers in the staff colony of the Airport Authority of India at Sahar, Mumbai.

2. It is the case of the petitioner that respondent No.3, who is the statutory authority, had entered into an agreement with respondent No.4 as a Joint Venture Company in respect of operating of Mumbai Airport. Until April, 2006, the Mumbai Airport was exclusively operated and run by respondent No.3. Thereafter as a result of the agreement, the right to operate, maintain, develop, design, construct, modernise, etc., was given to respondent No.4, whilst

respondent No.3 retained certain limited functions with them. Amongst other, respondent No.3 was to procure and ensure that the employees perform such functions and undertake such duties as may be required by respondent No.4 including taking of disciplinary action or even removal from the airport. Various rights and obligations were stated under the agreement between respondent No.3 and respondent No.4. In terms of letter dated 2nd May, 2006, Exhibit “C” to the petition, respondent No.3 declared the arrangement between the parties and also, while referring to the agreement, clarified that those employees not absorbed or not willing to be absorbed in the Joint Venture Company would continue to be the employees of respondent No.3 and be re-deployed at other units of respondent No.3. Large number of contract employees were employed to carry out myriad of jobs and work which in fact was of a permanent nature. The 11 workmen, though have been working continuously for a considerable time and doing the work of sweeping, cleaning, dusting, washing, etc., were threatened to be terminated. Number of workers filed a writ petition before the High Court, being Civil Writ Petition No.2362 of 1990, and by order dated 30th August, 1990 the

petition was admitted and interim relief of *status quo* was granted to the petitioners therein. In another writ petition, being Civil Writ Petition No. 504 of 1991, the High Court had directed respondent No.3 to consider on its own motion the regularisation of workers actually employed to do the work of sweeping and cleaning, etc. The orders of the High Court were challenged before the Supreme Court and in Special Leave Petition No. 15156 of 1996 in respect of sweepers and cleaners, vide order dated 11th April, 1996, the Supreme Court directed that the said workers including those presently concerned, were to be permanently absorbed by respondent No.3. The said order was not complied with and even wages, according to the workmen, were not being paid to them as per requirements of law.

3. In these circumstances on 12th July, 2005 the petitioner raised a demand with respondent No.3 demanding that the workmen be declared / treated as permanent employees and various benefits be granted to them in accordance with law. Reminders to this were also sent by the petitioner and respondent no.2 was requested to intervene in the matter under the provisions of

Industrial Disputes Act, 1947 and refer the dispute for adjudication. However, since nothing was materialised, vide letter dated 22nd December, 2005 respondent No.3 informed the Assistant Labour Commissioner that they would deny the averments made in the notice of demand and 11 Safaiwalas protected by the High Court, presently working in Airport Authority of India Colony were being paid by respondent No.3 and the writ petition had already been disposed of. It was stated that the letter of workmen claiming to be the permanent employees of respondent No.3 and demanding benefits retrospectively was incorrect and in fact the same was not received in their office.

4. The petitioner Union pursued the matter before the Authority and the Assistant Labour Commissioner (Central) Mumbai, submitted a Failure Report under Section 12(4) of the Industrial Disputes Act, 1947 on 13th March, 2006 observing that neither the Union nor the Management are agreeable for voluntary arbitration. After submission of this report, vide letter dated 18th September, 2006, reminders dated 14th February, 2007 and 16th April, 2007, the petitioner demanded reference of

their dispute to the appropriate forum. As no response was received, they were compelled to file the present writ petition.

5. From the above facts, it is clear and cannot be disputed that there was a dispute between the parties and they made efforts before the Conciliation Officer for settlement of their dispute, which resulted in filing of the Failure Report dated 13th March, 2006. Upon submission of such report, it was obligatory on the part of the appropriate Government to consider the request of the petitioner for reference of their dispute as spelled out in their letter dated 16th April, 2007. In that letter, besides making reference to different previous demands, they clearly stated that their demands related to the workmen as stated in Annexure “A” to the letter. The claims primarily were that the workmen be declared as permanent employees of respondent No.3 and be granted all the benefits with retrospective effect.

6. In the reply affidavit filed on behalf of respondent No.4, stand taken was that the said respondent was in no way concerned with any alleged

dispute between the petitioner and respondent No.3 and the petitioner was not entitled to any relief against respondent No.4. They denied existence of any employer – employee relationship and contended that the entire matter is between the petitioner and respondent No.3.

7. As far as reference of the dispute is concerned, it really need not detain us any further in view of the well established principles of law as noted by the Division Bench of this Court in the case of ***National Organic Chemical Industries Limited v/s State of Maharashtra & Others, (****Civil Writ petition No. 451 of 2007 decided on 19th April, 2007).* In view of this settled position, it is obligatory on the part of the appropriate Government to consider the case of the workmen for reference and to take a decision in that regard without unnecessary delay. It will not be appropriate for this Court to direct the respondents to make a reference but certainly a direction shall be issued to the respondents to consider and decide the case of the petitioner for reference in accordance with the provisions of Section 10 of the Industrial Disputes Act. The argument on behalf of respondent No.3 is that

the contract labour is not entitled to automatic absorption by the principal employer. Reference to the judgment in the case of ***A. P. SRTC & Others v/s G. Srinivas Reddy and Others,*** *(2006) 3 Supreme Court Cases 674,* will not further their case to their advantage. This would be a dispute which have to be fairly dealt with and answered by the Industrial Court / Tribunal to which the dispute is referred by the appropriate Government. This is not a determinative factor to show that there is no industrial dispute between the parties. The jurisdiction of the Court is limited and merits of the dispute would fall beyond the jurisdiction of this Court at this stage of the proceedings. It will not only be appropriate but certainly in accordance with law for the Court not to travel into the merits of the dispute between the parties.

8. Learned Counsel for the petitioner also argued that this Court should grant them interim protection in the shape of status quo in regard to service during the period when the appropriate Government makes a reference and the dispute between the parties are decided by the competent forum. While opposing this request of the

petitioner, learned Counsel appearing for the respondents relied upon the judgment of this Court in the case of ***MRF Limited, Goa v/s Goa MRF Employees' Union, Goa and Another,*** *(2004) I Labour Law Journal 394* and the judgment of the Supreme Court in ***The State of Orissa v/s Madan Gopal Rungta,*** *A.I.R. 1952 Supreme Court 12,* and argued that this Court would not grant interim order as even the Industrial Court would have no jurisdiction to grant such interim prayer. We do not propose to deal with and decide this question of law on merits and would leave it open.

9. In the facts and circumstances of the case, we would only observe that the petitioner would be at liberty to approach the Industrial Court for grant of appropriate order which the Industrial Court / Tribunal may consider in accordance with law. This direction, of course, is without prejudice to the rights and contentions of both the parties.

10. Consequently, this writ petition is disposed of with a direction to the Appropriate Government to consider the case of the petitioner for reference to the

appropriate forum in accordance with the provisions of Section 10(1)(c) of the Industrial Disputes Act. Further, the petitioner is at liberty to pray before the Industrial Court / Tribunal for grant of interim order in terms of the above observations.

11. Both the parties are left to bear their own costs.

Sd/-

CHIEF JUSTICE

Sd/-

DR.D.Y.CHANDRACHUD, J.